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Attorneys For Plaintiff/Counter-Defendant  
TERARECON, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

TERARECON, INC.,

Plaintiff,

v.

FOVIA, INC.; FOVIA MEDICAL, INC.;  
KENNETH FINEMAN; ROGER KATEN;  
GEORGE BUYANOVSKY; IGOR OKULIST;  
and JOSEF GOREK,

Defendants.

AND RELATED COUNTERCLAIMS.

Case No. C05-04407 (CW)

**STIPULATION AND ~~PROPOSED~~  
ORDER GRANTING  
COUNTERCLAIMANTS LEAVE  
TO FILE FIRST AMENDED  
COUNTERCLAIMS AND  
SCHEDULING HEARING ON  
SHORTENED TIME**

Date: May 12, 2006

Time: 10:00 a.m.

Judge: The Honorable Claudia Wilken

1 WHEREAS, Defendants' answer and counterclaims in this action were filed on or about  
2 February 6, 2006;

3 WHEREAS, the Court set a deadline for amendments to the pleadings of April 3, 2006,  
4 which was extended to April 10, 2006 by stipulation and court order;

5 WHEREAS, on April 3, 2006, TeraRecon and related parties moved to dismiss the  
6 second, third, and fourth counterclaims in this case and Fovia and related parties intend to amend  
7 their counterclaims as permitted by Federal Rule of Civil Procedure 15(a);

8 WHEREAS, TeraRecon does not agree that Fovia's intended amendments resolve all  
9 issues raised in the motion to dismiss but does not oppose entry of the amended counterclaims;

10 WHEREAS, TeraRecon is moving to amend its complaint to raise new claims and factual  
11 allegations that Fovia believes raise legal issues that overlap with arguments raised in  
12 TeraRecon's motion to dismiss and that need to be resolved by the Court;

13 WHEREAS, the parties are seeking to coordinate the resolution of these issues in a  
14 manner that minimizes the work required of the Court by hearing both motions on a coordinated  
15 schedule. Fovia is willing to respond to TeraRecon's motion to amend on a shortened time  
16 frame, and the parties believe a coordinated schedule will assist the Court and the parties to  
17 resolve the issues in an efficient matter.

18 IT IS HEREBY STIPULATED, therefore, by and between the parties, through their  
19 undersigned counsel, that:

20 1. Plaintiffs and Counter-defendants do not oppose Defendants' and Counter-  
21 claimants' amendment to the counterclaims, which are attached as Exhibit A;

22 2. Counter-claimants shall file their amended counterclaims herewith;

23 3. Counter-defendants' motion to dismiss, currently set for May 12, 2006 at 10:00,  
24 shall remain on calendar;

25 4. Plaintiffs and Counter-defendants shall file a motion for leave to file a Second  
26 Amended Complaint today;

27 5. Defendants and Counter-claimants' opposition to the motions to dismiss and the  
28 motion to amend shall be due on April 21 (in order to be heard on May 12, 2006);

1           6.       Plaintiffs and Counter-defendants shall file their reply on April 28;

2           7.       All parties request that the Court hear the motion to amend on May 12, 2006; and

3           8.       Counter-defendants need not respond to the amended counterclaims pending a  
4 hearing on its motion to dismiss filed April 3, 2006.

5  
6 Dated: April 10, 2006

ERIK J. OLSON  
PAUL F. COYNE  
MORRISON & FOERSTER LLP

7  
8  
9 By: s/ Erik J. Olson

10 Erik J. Olson

11 Attorneys for FOVIA, INC.; FOVIA  
12 MEDICAL, INC.; KENNETH FINEMAN;  
13 ROGER KATEN; GEORGE BUYANOVSKY;  
14 IGOR OKULIST; and JOSEF GOREK

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16 KIRKE M. HASSON  
17 SHARON L. O'GRADY

18 By /s/ Sharon L. O'Grady

19 Attorneys for Plaintiff  
20 TERARECON, INC.

I, ERIK J. OLSON, am the ECF User whose ID and password are being used to file this STIPULATION AND [PROPOSED] ORDER GRANTING COUNTERCLAIMANTS LEAVE TO FILE FIRST AMENDED COUNTERCLAIMS AND SCHEDULING HEARING ON SHORTENED TIME. In compliance with General Order 45, X.B., I hereby attest that SHARON L. O'GRADY has concurred in this filing.

Dated: April 10, 2006

ERIK J. OLSON  
PAUL F. COYNE  
MORRISON & FOERSTER LLP

By: s/ Erik J. Olson  
Erik J. Olson

Attorneys for FOVIA, INC.; FOVIA  
MEDICAL, INC.; KENNETH FINEMAN;  
ROGER KATEN; GEORGE BUYANOVSKY;  
IGOR OKULIST; and JOSEF GOREK

**[PROPOSED] ORDER**

Pursuant to the stipulation of the parties and good cause appearing, the Court orders that:

1. Defendants' and Counter-claimants are granted leave to amend under Federal Rule of Civil Procedure 15;
2. Defendants and Counter-claimants shall file their amended counterclaims herewith;
3. The opposition to Plaintiffs and Counter-defendants' motion to dismiss and motion to amend shall be filed April 21;
4. The reply shall be filed April 28;
5. The motion to dismiss and the motion to amend shall be heard on May 12 at 10:00 am.

Dated: 4/18/06



CLAUDIA WILKEN  
UNITED STATES DISTRICT JUDGE